



Memorandum

TO: Joint Senate and House Interim Ethics Committee

FROM: Utahns for Ethical Government

DATE: June 4, 2010

RE: Suggestions for Revisions to the Legislative Code of Official Conduct

In response to Senator Urquhart's invitation for public comment on revisions to the current code of conduct, we offer a number of suggestions that we believe deserve consideration. We recognize the difficulty of capturing the appropriate balance between broad principles and explicit prohibitions and hope you will work diligently to do so. We feel strongly that the current Code is inadequate and recall that the House Ethics Committee itself found some of the provisions of that Code impossible of enforcement.

As a preliminary matter, UEG believes that caps on campaign contributions and certain restrictions on solicitation of contributions are needed and would go a long way toward assuring the public that special interest money is not dictating legislative outcomes. We have assumed, however, that the Interim Ethics Committee may believe that these issues belong in the Government Operations Committee, where campaign contributions were taken up during the last legislative session. Therefore, we have not made suggestions about campaign caps in this memorandum although we are not dropping our interest in such matters. We continue to see campaign finance reform as directly relevant to the ethical operation of the Utah Legislature.

The wording below, relating to changes to the current Code of Official Conduct, may be capable of refinement by legislative counsel, but we hope that the intent is clear and reasonably specific.

A few of the terms (e.g., family members, personal advantage, personal benefit, paid lobbyist, person, control person) may require subsequent definitions for clarity.

1. No legislator shall engage in employment as a paid lobbyist while serving as a legislator or for two years after leaving office.

Such prohibitions would have the salutary effect of reducing the risk of engaging in the kind of employment that would "destroy or impair" independence of judgment of sitting legislators. It specifies the kind of activity that is most likely to be perceived as compromising one's ability to exercise independent judgment. It is narrower than the current code provision prohibiting employment or activity that would impair independent

judgment, yet also more explicit. It recognizes the reality that part-time legislators naturally bring employment experience and knowledge that make totally independent judgment impractical.

2. No legislator shall accept employment as a consultant, advisor, attorney, or employee of a paid lobbyist.

Same rationale as above

3. A legislator shall not use confidential information acquired as a result of legislative status to gain a personal advantage for the legislator or the legislator's family members, nor shall a legislator use the legislator's office for such personal advantage.

4. A legislator shall not accept a gift, as defined in [code provision] from a paid lobbyist.

5. A legislator shall not accept any campaign contribution that is given, explicitly or implicitly, with the expectation of a return governmental favor by the legislator to the contributor.

6. Legislators shall not be control persons in a corporation (including labor unions and nonprofits) while serving as legislators unless legislative status was not a contributing factor to the appointment and appointment does not serve to provide the legislator with any personal advantage or profit.

7. A legislator shall not threaten or exact retribution for a person's failure to comply with an inappropriate request or demand by the legislator that exceeds the legislator's legitimate scope of legislative authority.

8. A legislator is expected to obey the civil and criminal laws of the state and shall not engage in any illegal conduct that reflects negatively upon the legislator's fitness to serve as a representative of the people.

This would obviously require exercise of judgment by those given responsibility to judge the conduct. A parking ticket would probably not reflect upon a legislator's fitness to serve, while multiple, unpaid tickets over a long period of time might so reflect, as evidence of disrespect for the law, unless there were extenuating circumstances.

9. A legislator shall not attempt to discourage, by any means, the investigation or prosecution of any civil or criminal matter within the jurisdiction of another branch or level of government.

10. A legislator shall not use government facilities or employees in furtherance of a purely personal interest.

11. A legislator shall not attempt to unduly influence documents or opinions, including analyses and audits, prepared by public bodies and public officials in conjunction with any issue that is or proposed to be the subject of statewide initiative or referendum.

12. A legislator shall not suggest that a lobbyist further the personal interest of the legislator or the legislator's family members, by, for instance, suggesting that the lobbyist hire any of those persons.

13. Legislators shall disclose any potential or actual conflict of interest on any legislation or legislative matter as provided in [code provision].

14. Legislators shall not use their campaign money for personal use, as provided in [code provision].

15. Legislators shall not give funds from their own campaign fund to other legislators, public officials, candidates for public office, political parties, or charities but shall keep the money for their own campaigns, as intended by the contributors.

16. Legislators may seek an advance opinion from the Independent Ethics Commission with respect to any conduct that might be considered unethical. A written opinion from the Commission, when issued in advance of the conduct and which determines that the conduct is not a violation of the Code, would provide immunity from a complaint lodged against the legislator with respect to the specific facts addressed in the written opinion.

17. A legislator who violates the Legislative Code of Conduct shall be guilty of an ethical violation and subject to procedures provided for in legislation or legislative rule and remedies as determined by the Legislature.

We think it is important to state explicitly in the Code that Code violations are ethical violations. The Legislature's current code also refers to the criminal code section which provides that a violation of the Code constitutes a class B misdemeanor.

We support continuation of the substance of provisions requiring legislators to follow the procurement code process, as specified currently in (j), (k), and (3)(a).

In this memo we have not attempted to suggest improvements to the related statutes enacted during the 2010 session—statutes regarding conflicts of interest and disclosure of assets, personal use of campaign contributions, and restrictions on lobbyist gifts. We do not think that these separate statutes are adequate as currently written. We assumed, however, that specific content related to these matters could be omitted from the Code of Conduct as long as the appropriate code citations are incorporated in the Code of Conduct. We further assumed that the Interim Ethics Committee would view the content of these statutes as outside the immediate scope of its concerns.

Thank you for the invitation to provide input. We would be happy to meet with members of the Committee and its staff to discuss and clarify any of the above recommendations. In a future memo, we would also be happy to offer our analysis of any relevant statutes, at your request.